

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

|                               |   |                          |
|-------------------------------|---|--------------------------|
| <b>IN RE:</b>                 | § |                          |
|                               | § | <b>CASE NO. 20-42257</b> |
| <b>FRISCO ACQUISITION LLC</b> | § |                          |
|                               | § | <b>(Chapter 7)</b>       |
| <b>DEBTOR.</b>                | § |                          |

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**JOINT MOTION TO VOLUNTARILY DISMISS CASE WITH PREJUDICE**

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**YOUR RIGHTS MAY BE AFFECTED BY THE RELIEF SOUGHT IN THIS PLEADING. YOU SHOULD READ THIS PLEADING CAREFULLY AND DISCUSS IT WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU OPPOSE THE RELIEF SOUGHT BY THIS PLEADING, YOU MUST FILE A WRITTEN OBJECTION, EXPLAINING THE FACTUAL AND/OR LEGAL BASIS FOR OPPOSING THE RELIEF.**

**NO HEARING WILL BE CONDUCTED ON THIS PLEADING UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE SHOWN IN THE CERTIFICATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION.**

**IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT.**

**IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING WITH APPROPRIATE NOTICE. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.**

**COME NOW**, Christopher J. Moser, Chapter 7 Trustee for the Bankruptcy Estate of Frisco Acquisition LLC (“**Trustee**”), by and through his counsel of record, Singer & Levick, P.C., Frisco Acquisition LLC (“**Debtor**”), by and through its counsel of record, Joyce W. Lindauer Attorney, PLLC and Jules Slim, P.C. , Wanda Bertoia (“**Bertoia**”), by and through her attorneys of record,

Podoll & Podoll, P.C. and Scheef & Stone, L.L.P., and WPB Hospitality, L.L.C. (“**WPB**”), by and through its attorneys of record, Podoll & Podoll, P.C. and Scheef & Stone, L.L.P.F (together, the “**Parties**”), and file this their *Joint Motion to Voluntarily Dismiss Case With Prejudice* (“**Joint Motion**”) and in support of same, would respectfully show the Court as follows:

**Background**

1. On November 6, 2020 (“**Petition Date**”), Frisco Acquisition LLC (“**Debtor**”) filed a Voluntary Petition under Chapter 7 of Title 11 of the UNITED STATES CODE (“**BANKRUPTCY CODE**”), and such Petition was assigned case number 20-42257 (“**Bankruptcy Case**”).

2. Christopher J. Moser is the duly appointed Chapter 7 Trustee (“**Trustee**”) for the Debtor.

**A. Professionals Employed in the Case**

3. On February 19, 2021, this Court entered its *Order Approving Employment of Singer & Levick, P.C. as Special Counsel* for the Trustee(**Dkt.027**).

4. On April 27, 2022, this Court entered its *Order Authorizing Employment of Accountant* (Sheldon E. Levy, CPA) for the Trustee(**Dkt.0317**).

5. On September 9, 2022, this Court entered its *Order Approving Employment of Keating Wagner Polidori Free, P.C. as Special Counsel* (**Dkt.399**) for the Trustee in an action styled *Wanda Bertoia and WPB Hospitality, LLC, a Colorado Limited Liability Company v. Brett Payton; Coan, Payton & Payne, LLC, a Colorado Limited Liability Company; Galaxy Management, Inc., a Texas Corporation; Jagmohan Dhillon; Abbas Consulting, Inc., a Texas Corporation; and Frisco Acquisition, LLC, a Texas Limited Liability Company*, pending in the District Court, Denver County, Colorado and assigned Case No. 19cv33523 (“**CO State Action**”).

**B. Sale of All the Bankruptcy Estate's Assets**

6. During the pendency of the Bankruptcy Case, this Court entered an *Order Granting Motion to Sell Property of the Estate Free and Clear of all Liens, Claims and Encumbrances (Dkt.060)*, whereby the Trustee conveyed the assets referenced therein to Bertoia for the sum of Seven Hundred Fifty-Five Thousand and 00/100ths Dollars (\$755,000.00) (“**Sale Proceeds**”). The Estate currently holds the Sale Proceeds, less applicable bank fees, bond payments (which bank fees and bond payments continue to accrue) and payment to the accountant pursuant to the *Order Granting First and Final Application by Accountants for Compensation and Reimbursement of Expenses (Dkt.316)* entered by this Court on August 22, 2022 (“**Accountant Payment**”).

**C. Proofs of Claim**

7. The following three proofs of claim have been filed in the Debtor's bankruptcy case:
- a. POC.001 (including all amendments) -- WPB Hospitality, LLC -- \$1,137,000.00
  - b. POC.002 (including all amendments) -- Wanda Bertoia - \$1,000,000.00
  - c. POC.003 -- Holland & Hart, LLC - \$78,360.60
8. Objections have been filed to all the above claims.
9. The Proof of Claim of Holland & Hart was untimely filed. This claim is the subject of a Claim Objection filed by Bertoia and WPB on July 23, 2021 (**Dkt.103**), and amended on September 13, 2021 (**Dkt.166**).

**D. Agreement Announced**

10. The parties appeared for trial in the Bankruptcy Case on October 26, 2022, in regard to Debtor's Objections to the Proof of Claim of WPB, including all amendments (**POC.001**) and the Proof of Claim of Bertoia, including all amendments (**POC.002**).

11. This Bankruptcy Case has been pending for two years. The claims objections relate to breach of contract and fraud claims which have been pending in the Colorado Court for three years.

12. The Parties agreed it was in their best interest to dismiss this Bankruptcy Case with prejudice; obviate the need for further proceedings in this case; eliminate the possibility of appeals in this case; and for Debtor, Bertoia and WPB to focus their efforts on the CO State Action.

13. Accordingly, prior to being called to trial, the Parties announced to the Court that they desired that this Bankruptcy Case be dismissed with prejudice upon the express conditions set forth below.

14. Pursuant to the agreements reached between them, the Parties have agreed as follows:

- a. The Bankruptcy Case will be dismissed with prejudice.
- b. Within 17 days of October 26, 2022, Singer & Levick, as Special Counsel to the Trustee, will file its Application for Payment of Fees and Expenses (“**S&L Fee App**”).
- c. Within 17 days of October 26, 2022, Keating Wagner Polidori Free, P.C., as Special Counsel to the Trustee in the CO State Action, will file its Application for Payment of Fees and Expenses (“**KWPF Fee App**”).
- d. Prior to dismissal, the Trustee shall pay Singer & Levick, P.C. all of its allowed fees and expenses pursuant to the S&L Fee App.
- e. Prior to dismissal, the Trustee shall pay Keating Wagner Polidori Free, P.C. all of its allowed fees and expenses pursuant to the KWPF Fee App.

- f. Prior to dismissal, the Trustee shall be authorized to pay himself the full statutory commission authorized under 11 U.S.C. § 326 in the amount of Forty-One Thousand and 00/100ths Dollars (\$41,000.00), plus his expenses of One Hundred Fifty-Seven and 00/100ths Dollars (\$157.00).
- g. Following the payments described in 10(d), (e) and (f) above, and prior to dismissal, Keating Wagner Polidori Free, P.C. shall file a Motion to Interplead the remaining Sale Proceeds into the Registry of the Colorado Court in the CO State Action. Following entry of an Order approving such Motion to Interplead, KWPF will move to withdraw in the CO State Action and the Trustee will then disburse the remaining Sale Proceeds to the Registry of the Colorado Court in the CO State Action. All of the payments referenced in 10(b), (c) (d), (e), (f) and (g), plus the bank fees and bond payments, as well as the Accountant Payment, are constructive disbursements pursuant to 11 U.S.C. § 326.
- h. Notwithstanding 11 U.S.C. § 349, the *Order Granting Motion to Sell Property of the Estate Free and Clear of All Liens, Claims and Encumbrances (Dkt.060)* entered on June 11, 2021 shall remain in full force and effect following the dismissal of the Bankruptcy Case, as well as all Orders authorizing payments of administrative fees.
- i. It is further agreed that 11 U.S.C. § 349(b)(3) does not apply with regard to the causes of action sold to Bertoia nor does it apply in any way to the Sales Proceeds.

15. During the Bankruptcy Case, the Trustee received documents (“**Documents**”) from Brett Payton and/or Coan, Payton & Payne, LLC (“**Payton**”), Holland & Hart LLP (“**H&H**”) and the Debtor c/o its counsel, Joyce Lindauer. The Trustee is authorized to return the Payton Documents to

Payton, the H&H Documents to H&H, and the Debtor Documents to its counsel, Joyce Lindauer. Bertoia and WPB agree to never seek these Documents from either the Trustee or his counsel. Should Bertoia or WPF ever desire to take the deposition of the Trustee and/or his counsel in aid of the CO State Action, such deposition(s) will be conducted in either the office of the Trustee or his counsel and such deposition(s) will be limited to events that occurred during the pendency of the Bankruptcy Case.

16. Nothing in the dismissal of the bankruptcy shall preclude or otherwise affect the rights of the Parties in the CO State Action or their entitlement to the Sales Proceeds. No party may use any part of this Order for an advantage in the CO State Action.

17. The dismissal of this Bankruptcy Case does not become effective until all payments referenced in this Motion, including payment to the registry of the Colorado Court in the CO State Action as provided in Paragraph 12(g), and the Order approving same, are made.

18. The Bankruptcy Court will retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of the Order approving this Motion.

**WHEREFORE, PREMISES CONSIDERED,** Parties Christopher J. Moser, Chapter 7 Trustee for the Bankruptcy Estate of Frisco Acquisition LLC (“**Trustee**”), Frisco Acquisition LLC (“**Debtor**”), Wanda Bertoia (“**Bertoia**”) and WPB Hospitality, L.L.C. (“**WPB**”) respectfully pray that the Court grant the *Joint Motion to Dismiss Case With Prejudice*, dismiss with prejudice and close such Bankruptcy Case, and for such other and further relief as the Parties may show themselves to be justly entitled.

**Dated: November 9, 2022**

Respectfully submitted,

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| <p>By: <u>/s/ Joyce W. Lindauer</u><br/>Joyce W. Lindauer<br/>State Bar No. 21555700<br/>Joyce W. Lindauer Attorney, PLLC<br/>1412 Main Street, Suite 500<br/>Dallas, Texas 75202<br/>Phone: 972.503.4033<br/>Fax: 972.503.4034<br/>Email: <a href="mailto:joyce@joycelindauer.com">joyce@joycelindauer.com</a></p> <p><b>ATTORNEYS FOR DEBTOR</b></p> | <p>By: <u>/s/ Larry A. Levick</u><br/>Larry A. Levick<br/>State Bar No. 12252600<br/>Todd A. Hoodenpyle<br/>State Bar No. 00798265<br/>Singer &amp; Levick, P.C.<br/>16200 Addison Road, Suite 140<br/>Addison, Texas 75001<br/>Phone: 972.380.5533<br/>Fax: 972.380.5748<br/>Email: <a href="mailto:levick@singerlevick.com">levick@singerlevick.com</a><br/>Email: <a href="mailto:hoodenpyle@singerlevick.com">hoodenpyle@singerlevick.com</a></p> <p><b>ATTORNEYS FOR:<br/>CHRISTOPHER J. MOSER, CHAPTER 7<br/>TRUSTEE</b></p>  |
|  | <p>By: <u>/s/ Richard B. Podoll</u><br/>Richard B. Podoll<br/>Colorado Atty. Reg. #8775<br/>(admitted pro hac vice)<br/>Podoll &amp; Podoll, P.C.<br/>5619 DTC Parkway, Suite 1100<br/>Greenwood Village, CO 80111<br/>Phone: 303.861.4000<br/>Telecopier: 303.861.4004<br/>Email: <a href="mailto:rich@podoll.net">rich@podoll.net</a></p> <p><b>and</b><br/>Patrick J. Schurr<br/>State Bar No. 17853530<br/>Scheef &amp; Stone, L.L.P.<br/>2600 Network Boulevard, Suite 400<br/>Frisco, Texas 75034<br/>Phone: 214.472.2100<br/>Fax: 214.472.2150<br/>Email: <a href="mailto:patrick.schurr@solidcounsel.com">patrick.schurr@solidcounsel.com</a></p> <p><b>ATTORNEYS FOR WANDA BERTOIA<br/>AND WPB HOSPITALITY, L.L.C.</b></p> |

**CERTIFICATE OF SERVICE**

I hereby certify that Notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District, which includes the parties as shown below, and to the parties on the attached Service List via first class mail, postage prepaid, on this 9th day of November, 2022.

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| <b><u>ATTORNEY FOR DEBTOR:</u></b><br>Joyce W. Lindauer<br>Joyce W. Lindauer Attorney, PLLC<br>1412 Main Street, Suite 500<br>Dallas, TX 75202<br><b>Via ECF Noticing</b>             | <b><u>ATTORNEYS FOR BERTOIA AND WPB:</u></b><br>Richard B. Podoll<br>Podoll & Podoll, P.C.<br>5619 DTC Parkway, Suite 1100<br>Greenwood Village, CO 80111<br><b>Via ECF Noticing</b><br><br>Patrick J. Schurr<br>State Bar No. 17853530<br>Scheef & Stone, L.L.P.<br>2600 Network Boulevard, Suite 400<br>Frisco, Texas 75034<br><b>Via ECF Noticing</b> |
| <b><u>TRUSTEE:</u></b><br>Christopher J. Moser Quilling, Selander,<br>Lownds,<br>Winslett & Moser, PC<br>2001 Bryan Street, Suite 1800<br>Dallas, TX 75201<br><b>Via ECF Noticing</b> | <b><u>U.S. TRUSTEE:</u></b><br>Office of the US Trustee<br>110 N. College Avenue, Suite 300<br>Tyler, TX 75702<br><b>Via ECF Noticing</b>  |

/s/ Larry A. Levick  
Larry A. Levick